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Introduced by Senator Pavley

February 23, 2015

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An act to amend ~~Sections 136.2, 273.5, and 646.9~~ *Section 136.2* of the Penal Code, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 307, as amended, Pavley. Restraining orders.

Existing law ~~requires~~ *requires*, in all cases in which a criminal defendant is convicted of specified crimes, including any crime for which the defendant must register as a sex offender, the court to consider issuing an order, valid for up to 10 years, restraining the defendant from any contact with the victim. Existing law authorizes the order to be issued by the court regardless of whether the defendant is sentenced to state prison or a county jail, or whether the imposition of sentence is suspended and the defendant is placed on probation.

This bill would additionally authorize the order to be issued by the court regardless of whether the imposition of sentence is suspended and the defendant is placed on mandatory supervision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 136.2 of the Penal Code is amended to  
2 read:  
3 136.2. (a) (1) Upon a good cause belief that harm to, or  
4 intimidation or dissuasion of, a victim or witness has occurred or

1 is reasonably likely to occur, a court with jurisdiction over a  
2 criminal matter may issue orders, including, but not limited to, the  
3 following:

4 (A) An order issued pursuant to Section 6320 of the Family  
5 Code.

6 (B) An order that a defendant shall not violate any provision of  
7 Section 136.1.

8 (C) An order that a person before the court other than a  
9 defendant, including, but not limited to, a subpoenaed witness or  
10 other person entering the courtroom of the court, shall not violate  
11 any provisions of Section 136.1.

12 (D) An order that a person described in this section shall have  
13 no communication whatsoever with a specified witness or a victim,  
14 except through an attorney under reasonable restrictions that the  
15 court may impose.

16 (E) An order calling for a hearing to determine if an order as  
17 described in subparagraphs (A) to (D), inclusive, should be issued.

18 (F) (i) An order that a particular law enforcement agency within  
19 the jurisdiction of the court provide protection for a victim or a  
20 witness, or both, or for immediate family members of a victim or  
21 a witness who reside in the same household as the victim or witness  
22 or within reasonable proximity of the victim's or witness'  
23 household, as determined by the court. The order shall not be made  
24 without the consent of the law enforcement agency except for  
25 limited and specified periods of time and upon an express finding  
26 by the court of a clear and present danger of harm to the victim or  
27 witness or immediate family members of the victim or witness.

28 (ii) For purposes of this paragraph, "immediate family members"  
29 include the spouse, children, or parents of the victim or witness.

30 (G) (i) An order protecting a victim or witness of violent crime  
31 from all contact by the defendant, or contact, with the intent to  
32 annoy, harass, threaten, or commit acts of violence, by the  
33 defendant. The court or its designee shall transmit orders made  
34 under this paragraph to law enforcement personnel within one  
35 business day of the issuance, modification, extension, or  
36 termination of the order, pursuant to subdivision (a) of Section  
37 6380 of the Family Code. It is the responsibility of the court to  
38 transmit the modification, extension, or termination orders made  
39 under this paragraph to the same agency that entered the original

1 protective order into the Domestic Violence Restraining Order  
2 System.

3 (ii) (I) If a court does not issue an order pursuant to clause (i)  
4 in a case in which the defendant is charged with a crime involving  
5 domestic violence as defined in Section 13700 or in Section 6211  
6 of the Family Code, the court on its own motion shall consider  
7 issuing a protective order upon a good cause belief that harm to,  
8 or intimidation or dissuasion of, a victim or witness has occurred  
9 or is reasonably likely to occur, that provides as follows:

10 (ia) The defendant shall not own, possess, purchase, receive, or  
11 attempt to purchase or receive, a firearm while the protective order  
12 is in effect.

13 (ib) The defendant shall relinquish any firearms that he or she  
14 owns or possesses pursuant to Section 527.9 of the Code of Civil  
15 Procedure.

16 (II) Every person who owns, possesses, purchases, or receives,  
17 or attempts to purchase or receive, a firearm while this protective  
18 order is in effect is punishable pursuant to Section 29825.

19 (iii) An order issued, modified, extended, or terminated by a  
20 court pursuant to this subparagraph shall be issued on forms  
21 adopted by the Judicial Council of California and that have been  
22 approved by the Department of Justice pursuant to subdivision (i)  
23 of Section 6380 of the Family Code. However, the fact that an  
24 order issued by a court pursuant to this section was not issued on  
25 forms adopted by the Judicial Council and approved by the  
26 Department of Justice shall not, in and of itself, make the order  
27 unenforceable.

28 (iv) A protective order issued under this subparagraph may  
29 require the defendant to be placed on electronic monitoring if the  
30 local government, with the concurrence of the county sheriff or  
31 the chief probation officer with jurisdiction, adopts a policy to  
32 authorize electronic monitoring of defendants and specifies the  
33 agency with jurisdiction for this purpose. If the court determines  
34 that the defendant has the ability to pay for the monitoring program,  
35 the court shall order the defendant to pay for the monitoring. If  
36 the court determines that the defendant does not have the ability  
37 to pay for the electronic monitoring, the court may order electronic  
38 monitoring to be paid for by the local government that adopted  
39 the policy to authorize electronic monitoring. The duration of  
40 electronic monitoring shall not exceed one year from the date the

1 order is issued. At no time shall the electronic monitoring be in  
2 place if the protective order is not in place.

3 (2) For purposes of this subdivision, a minor who was not a  
4 victim of, but who was physically present at the time of, an act of  
5 domestic violence, is a witness and is deemed to have suffered  
6 harm within the meaning of paragraph (1).

7 (b) A person violating an order made pursuant to subparagraphs  
8 (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be  
9 punished for any substantive offense described in Section 136.1,  
10 or for a contempt of the court making the order. A finding of  
11 contempt shall not be a bar to prosecution for a violation of Section  
12 136.1. However, a person so held in contempt shall be entitled to  
13 credit for punishment imposed therein against a sentence imposed  
14 upon conviction of an offense described in Section 136.1. A  
15 conviction or acquittal for a substantive offense under Section  
16 136.1 shall be a bar to a subsequent punishment for contempt  
17 arising out of the same act.

18 (c) (1) (A) Notwithstanding subdivision (e), an emergency  
19 protective order issued pursuant to Chapter 2 (commencing with  
20 Section 6250) of Part 3 of Division 10 of the Family Code or  
21 Section 646.91 shall have precedence in enforcement over any  
22 other restraining or protective order, provided the emergency  
23 protective order meets all of the following requirements:

24 (i) The emergency protective order is issued to protect one or  
25 more individuals who are already protected persons under another  
26 restraining or protective order.

27 (ii) The emergency protective order restrains the individual who  
28 is the restrained person in the other restraining or protective order  
29 specified in clause (i).

30 (iii) The provisions of the emergency protective order are more  
31 restrictive in relation to the restrained person than are the provisions  
32 of the other restraining or protective order specified in clause (i).

33 (B) An emergency protective order that meets the requirements  
34 of subparagraph (A) shall have precedence in enforcement over  
35 the provisions of any other restraining or protective order only  
36 with respect to those provisions of the emergency protective order  
37 that are more restrictive in relation to the restrained person.

38 (2) Except as described in paragraph (1), a no-contact order, as  
39 described in Section 6320 of the Family Code, shall have

1 precedence in enforcement over any other restraining or protective  
2 order.

3 (d) (1) A person subject to a protective order issued under this  
4 section shall not own, possess, purchase, or receive, or attempt to  
5 purchase or receive, a firearm while the protective order is in effect.

6 (2) The court shall order a person subject to a protective order  
7 issued under this section to relinquish any firearms he or she owns  
8 or possesses pursuant to Section 527.9 of the Code of Civil  
9 Procedure.

10 (3) A person who owns, possesses, purchases, or receives, or  
11 attempts to purchase or receive, a firearm while the protective  
12 order is in effect is punishable pursuant to Section 29825.

13 (e) (1) In all cases in which the defendant is charged with a  
14 crime involving domestic violence, as defined in Section 13700  
15 or in Section 6211 of the Family Code, or a violation of Section  
16 261, 261.5, or 262, or any crime that requires the defendant to  
17 register pursuant to subdivision (c) of Section 290, the court shall  
18 consider issuing the above-described orders on its own motion.  
19 All interested parties shall receive a copy of those orders. In order  
20 to facilitate this, the court's records of all criminal cases involving  
21 domestic violence or a violation of Section 261, 261.5, or 262, or  
22 any crime that requires the defendant to register pursuant to  
23 subdivision (c) of Section 290, shall be marked to clearly alert the  
24 court to this issue.

25 (2) In those cases in which a complaint, information, or  
26 indictment charging a crime involving domestic violence, as  
27 defined in Section 13700 or in Section 6211 of the Family Code,  
28 or a violation of Section 261, 261.5, or 262, or any crime that  
29 requires the defendant to register pursuant to subdivision (c) of  
30 Section 290, has been issued, except as described in subdivision  
31 (c), a restraining order or protective order against the defendant  
32 issued by the criminal court in that case has precedence in  
33 enforcement over a civil court order against the defendant.

34 (3) Custody and visitation with respect to the defendant and his  
35 or her minor children may be ordered by a family or juvenile court  
36 consistent with the protocol established pursuant to subdivision  
37 (f), but if ordered after a criminal protective order has been issued  
38 pursuant to this section, the custody and visitation order shall make  
39 reference to, and, if there is not an emergency protective order that  
40 has precedence in enforcement pursuant to paragraph (1) of

1 subdivision (c), or a no-contact order, as described in Section 6320  
2 of the Family Code, acknowledge the precedence of enforcement  
3 of, an appropriate criminal protective order. On or before July 1,  
4 2014, the Judicial Council shall modify the criminal and civil court  
5 forms consistent with this subdivision.

6 (f) On or before January 1, 2003, the Judicial Council shall  
7 promulgate a protocol, for adoption by each local court in  
8 substantially similar terms, to provide for the timely coordination  
9 of all orders against the same defendant and in favor of the same  
10 named victim or victims. The protocol shall include, but shall not  
11 be limited to, mechanisms for ensuring appropriate communication  
12 and information sharing between criminal, family, and juvenile  
13 courts concerning orders and cases that involve the same parties,  
14 and shall permit a family or juvenile court order to coexist with a  
15 criminal court protective order subject to the following conditions:

16 (1) An order that permits contact between the restrained person  
17 and his or her children shall provide for the safe exchange of the  
18 children and shall not contain language either printed or  
19 handwritten that violates a “no-contact order” issued by a criminal  
20 court.

21 (2) Safety of all parties shall be the courts’ paramount concern.  
22 The family or juvenile court shall specify the time, day, place, and  
23 manner of transfer of the child, as provided in Section 3100 of the  
24 Family Code.

25 (g) On or before January 1, 2003, the Judicial Council shall  
26 modify the criminal and civil court protective order forms  
27 consistent with this section.

28 (h) (1) In any case in which a complaint, information, or  
29 indictment charging a crime involving domestic violence, as  
30 defined in Section 13700 or in Section 6211 of the Family Code,  
31 has been filed, the court may consider, in determining whether  
32 good cause exists to issue an order under subparagraph (A) of  
33 paragraph (1) of subdivision (a), the underlying nature of the  
34 offense charged, and the information provided to the court pursuant  
35 to Section 273.75.

36 (2) In any case in which a complaint, information, or indictment  
37 charging a violation of Section 261, 261.5, or 262, or any crime  
38 that requires the defendant to register pursuant to subdivision (c)  
39 of Section 290, has been filed, the court may consider, in  
40 determining whether good cause exists to issue an order under

paragraph (1) of subdivision (a), the underlying nature of the offense charged, the defendant's relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by any civil or criminal court involving the defendant, and the defendant's criminal history, including, but not limited to, prior convictions for a violation of Section 261, 261.5, or 262, ~~or any a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, or any other forms of violence, or any weapons offenses.~~ offense.

(i) (1) In all cases in which a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation or mandatory supervision. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, “local government” means the county that has jurisdiction over the protective order.

~~SEC. 2. Section 273.5 of the Penal Code is amended to read:~~

~~273.5. (a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment.~~

~~(b) Subdivision (a) shall apply if the victim is or was one or more of the following:~~

~~(1) The offender’s spouse or former spouse.~~

~~(2) The offender’s cohabitant or former cohabitant.~~

~~(3) The offender’s fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243.~~

~~(4) The mother or father of the offender’s child.~~

~~(c) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.~~

~~(d) As used in this section, “traumatic condition” means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, “strangulation” and “suffocation” include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.~~

~~(e) For the purpose of this section, a person shall be considered the father or mother of another person’s child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.~~

~~(f) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state~~

1 prison for two, four, or five years, or by both imprisonment and a  
2 fine of up to ten thousand dollars (\$10,000):

3 ~~(2) Any person convicted of a violation of this section for acts~~  
4 ~~occurring within seven years of a previous conviction under~~  
5 ~~subdivision (e) of Section 243 shall be punished by imprisonment~~  
6 ~~in the state prison for two, three, or four years, or in a county jail~~  
7 ~~for not more than one year, or by a fine of up to ten thousand~~  
8 ~~dollars (\$10,000), or by both that imprisonment and fine.~~

9 ~~(g) If probation is granted to any person convicted under~~  
10 ~~subdivision (a), the court shall impose probation consistent with~~  
11 ~~the provisions of Section 1203.097.~~

12 ~~(h) If probation is granted, or the execution or imposition of a~~  
13 ~~sentence is suspended, for any defendant convicted under~~  
14 ~~subdivision (a) who has been convicted of any prior offense~~  
15 ~~specified in subdivision (f), the court shall impose one of the~~  
16 ~~following conditions of probation:~~

17 ~~(1) If the defendant has suffered one prior conviction within the~~  
18 ~~previous seven years for a violation of any offense specified in~~  
19 ~~subdivision (f), it shall be a condition of probation, in addition to~~  
20 ~~the provisions contained in Section 1203.097, that he or she be~~  
21 ~~imprisoned in a county jail for not less than 15 days.~~

22 ~~(2) If the defendant has suffered two or more prior convictions~~  
23 ~~within the previous seven years for a violation of any offense~~  
24 ~~specified in subdivision (f), it shall be a condition of probation, in~~  
25 ~~addition to the provisions contained in Section 1203.097, that he~~  
26 ~~or she be imprisoned in a county jail for not less than 60 days.~~

27 ~~(3) The court, upon a showing of good cause, may find that the~~  
28 ~~mandatory imprisonment required by this subdivision shall not be~~  
29 ~~imposed and shall state on the record its reasons for finding good~~  
30 ~~cause.~~

31 ~~(i) If probation is granted upon conviction of a violation of~~  
32 ~~subdivision (a), the conditions of probation may include, consistent~~  
33 ~~with the terms of probation imposed pursuant to Section 1203.097,~~  
34 ~~in lieu of a fine, one or both of the following requirements:~~

35 ~~(1) That the defendant make payments to a battered women's~~  
36 ~~shelter, up to a maximum of five thousand dollars (\$5,000),~~  
37 ~~pursuant to Section 1203.097.~~

38 ~~(2) (A) That the defendant reimburse the victim for reasonable~~  
39 ~~costs of counseling and other reasonable expenses that the court~~  
40 ~~finds are the direct result of the defendant's offense.~~

~~(B) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. An order to make payments to a battered women's shelter shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.~~

~~(j) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation or mandatory supervision.~~

~~(k) If a peace officer makes an arrest for a violation of this section, the peace officer is not required to inform the victim of his or her right to make a citizen's arrest pursuant to subdivision (b) of Section 836.~~

~~SEC. 3.— Section 646.9 of the Penal Code is amended to read:~~

~~646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000); or by both that fine and imprisonment, or by imprisonment in the state prison.~~

1     ~~(b) Any person who violates subdivision (a) when there is a~~  
2     ~~temporary restraining order, injunction, or any other court order~~  
3     ~~in effect prohibiting the behavior described in subdivision (a)~~  
4     ~~against the same party, shall be punished by imprisonment in the~~  
5     ~~state prison for two, three, or four years.~~

6     ~~(c) (1) Every person who, after having been convicted of a~~  
7     ~~felony under Section 273.5, 273.6, or 422, commits a violation of~~  
8     ~~subdivision (a) shall be punished by imprisonment in a county jail~~  
9     ~~for not more than one year, or by a fine of not more than one~~  
10    ~~thousand dollars (\$1,000), or by both that fine and imprisonment,~~  
11    ~~or by imprisonment in the state prison for two, three, or five years.~~

12    ~~(2) Every person who, after having been convicted of a felony~~  
13    ~~under subdivision (a), commits a violation of this section shall be~~  
14    ~~punished by imprisonment in the state prison for two, three, or~~  
15    ~~five years.~~

16    ~~(d) In addition to the penalties provided in this section, the~~  
17    ~~sentencing court may order a person convicted of a felony under~~  
18    ~~this section to register as a sex offender pursuant to Section~~  
19    ~~290.006.~~

20    ~~(e) For the purposes of this section, “harasses” means engages~~  
21    ~~in a knowing and willful course of conduct directed at a specific~~  
22    ~~person that seriously alarms, annoys, torments, or terrorizes the~~  
23    ~~person, and that serves no legitimate purpose.~~

24    ~~(f) For the purposes of this section, “course of conduct” means~~  
25    ~~two or more acts occurring over a period of time, however short,~~  
26    ~~evidencing a continuity of purpose. Constitutionally protected~~  
27    ~~activity is not included within the meaning of “course of conduct.”~~

28    ~~(g) For the purposes of this section, “credible threat” means a~~  
29    ~~verbal or written threat, including that performed through the use~~  
30    ~~of an electronic communication device, or a threat implied by a~~  
31    ~~pattern of conduct or a combination of verbal, written, or~~  
32    ~~electronically communicated statements and conduct, made with~~  
33    ~~the intent to place the person that is the target of the threat in~~  
34    ~~reasonable fear for his or her safety or the safety of his or her~~  
35    ~~family, and made with the apparent ability to carry out the threat~~  
36    ~~so as to cause the person who is the target of the threat to~~  
37    ~~reasonably fear for his or her safety or the safety of his or her~~  
38    ~~family. It is not necessary to prove that the defendant had the intent~~  
39    ~~to actually carry out the threat. The present incarceration of a~~  
40    ~~person making the threat shall not be a bar to prosecution under~~

1 this section. Constitutionally protected activity is not included  
2 within the meaning of “credible threat.”

3 (h) For purposes of this section, the term “electronic  
4 communication device” includes, but is not limited to, telephones,  
5 cellular phones, computers, video recorders, fax machines, or  
6 pagers. “Electronic communication” has the same meaning as the  
7 term defined in Subsection 12 of Section 2510 of Title 18 of the  
8 United States Code.

9 (i) This section shall not apply to conduct that occurs during  
10 labor picketing.

11 (j) If probation is granted, or the execution or imposition of a  
12 sentence is suspended, for any person convicted under this section,  
13 it shall be a condition of probation that the person participate in  
14 counseling, as designated by the court. However, the court, upon  
15 a showing of good cause, may find that the counseling requirement  
16 shall not be imposed.

17 (k) (1) The sentencing court also shall consider issuing an order  
18 restraining the defendant from any contact with the victim, that  
19 may be valid for up to 10 years, as determined by the court. It is  
20 the intent of the Legislature that the length of any restraining order  
21 be based upon the seriousness of the facts before the court, the  
22 probability of future violations, and the safety of the victim and  
23 his or her immediate family.

24 (2) This protective order may be issued by the court whether  
25 the defendant is sentenced to state prison, county jail, or if  
26 imposition of sentence is suspended and the defendant is placed  
27 on probation or mandatory supervision.

28 (l) For purposes of this section, “immediate family” means any  
29 spouse, parent, child, any person related by consanguinity or  
30 affinity within the second degree, or any other person who regularly  
31 resides in the household, or who, within the prior six months,  
32 regularly resided in the household.

33 (m) The court shall consider whether the defendant would  
34 benefit from treatment pursuant to Section 2684. If it is determined  
35 to be appropriate, the court shall recommend that the Department  
36 of Corrections and Rehabilitation make a certification as provided  
37 in Section 2684. Upon the certification, the defendant shall be

- 1 evaluated and transferred to the appropriate hospital for treatment
- 2 pursuant to Section 2684.

O